

June 13, 2005

# AGAR ADVISORY

**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT  
AGAR ADVISORY NO. 75**

## **Use of Brand Name Specifications**

**INTRODUCTION:** The purpose of this Agriculture Acquisition Regulation (AGAR) Advisory is to promulgate Office of Management and Budget (OMB) memorandum dated April 11, 2005 and Department of Agriculture (USDA) Chief Information Officer (CIO) and Senior Procurement Executive (SPE) joint memorandum dated June 9, 2005.

**SUMMARY:** The referenced OMB and USDA memoranda (copies attached) remind acquisition and information technology personnel about the need to maintain vendor and technology neutral contract specifications and to comply with the requirements of the Federal Acquisition Regulation (FAR) regarding the use of brand name specifications. Additionally, new requirements have been established for publicizing justifications for use of a brand name associated with a single manufacturer. Note that the existence of Government-wide contracts for name brand products does not connote blanket approval to specify a particular brand name absent required justifications.

### **SPECIFIC ISSUES:**

Based on the above cited OMB and joint USDA CIO and SPE memoranda, USDA agencies are reminded that:

- Use of brand name specifications should be limited.
- If use of a brand name specification is necessary, a written justification in accordance with FAR 11.105 is required.
- A procurement that uses a brand name specification is considered to be a contract action that does not provide for full and open competition, or in the case of simplified acquisition, a procurement that does not provide for maximum practicable competition.
- The requirement to limit the use of brand name specifications applies not only to contracts and simplified acquisitions, but also to orders under Federal Supply Schedule (FSS) and other General Services Administration (GSA) contractual agreements.

FAR Section 11.105, “Items peculiar to one manufacturer,” states that:

“Agency requirements shall not be written so as to require a particular brand name, product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless –

- (a) The particular brand name, product, or feature is essential to the Government’s requirements, and market research indicates other companies’ similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency’s needs;
- (b) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302-1); and
- (c) The basis for not providing for maximum practicable competition is documented in the file when the acquisition is awarded using simplified acquisition procedures.”

The OMB memorandum further expresses concern that there may, in recent years, have been a significant increase in the use of brand name specifications, particularly for information technology (IT) procurements. Examples of both IT and non-IT procurements with brand name specifications are included in that memorandum. With respect to the specific example of specifications citing brand name microprocessors, OMB advises agencies that they should either: (1) articulate a benchmark for performance or (2) specify the requirements for applications and interoperability. See FAR Part 11 which prescribes the policies and procedures for describing agency needs.

When use of a brand name associated with a single manufacturer is deemed necessary, OMB has requested that the justification be publicized with the contract solicitation when the solicitation is posted to the Federal Business Opportunities website at <http://www.fedbizopps.gov>. OMB further states that if a Federal agency considers that publication of the justification is inappropriate because of national security, trade secrets, or similar concerns, a copy of the justification should be provided to the Office of Federal Procurement Policy (OFPP).

To comply with the requirements of the OMB memorandum:

- USDA Head of the Contracting Activity Designees (HCADs) and Agency CIOs have been requested to notify the Office of Procurement and Property Management and Office of the Chief Information Officer, respectively, of their agency’s method(s) for ensuring that:
  - (a) the use of brand name specifications is mitigated; and
  - (b) when required, written justifications fully support the need to specify “a particular brand name, product, or features of a product peculiar to one manufacturer.”

- Procurement personnel are reminded that if a specification for an item includes a requirement that one of the parts, components or other feature of the item, be a particular brand name, product, or include a particular feature of a product peculiar to one manufacturer, then that specification is considered to be a brand name specification and the requirements of FAR 11.105 apply.
- In addition to any procedures and requirements established by individual USDA agencies, at a minimum, procurement personnel shall continue to comply with the requirements of FAR 11.105 and shall:
  - (a) Ensure that use of brand name specifications is limited.
  - (b) Ensure that the decision to use a brand name specification is accompanied by a written justification that fully supports the need to specify a particular brand name, product or feature.
    - (i) For procurements subject to FAR Part 6, "Competition Requirements," comply with the justification and approval requirements of FAR 6.303 and 6.304. See FAR 6.302-1(c), "*Application for brand name descriptions.*"
    - (ii) For Federal Supply Schedule orders, comply with FAR 8.405 "Ordering procedures for Federal Supply Schedules," including as applicable 8.405-6 "Sole source justification and approval" requirements.
    - (iii) For procurements under simplified acquisition procedures, document the basis for not providing for maximum practicable competition. (See FAR 13.1, 13.5 and 11.105(c).)
  - (c) Ensure that written justifications are retained in the procurement file.
  - (d) Ensure that written justifications for use of a brand name specification are available for public inspection, whether by posting on the FedBizOpps website (if the procurement is one for which posting on FedBizOpps is required) or making the information available upon request.
  - (e) Submit to the agency HCAD, written justifications that are deemed inappropriate for public inspection due to national security, trade secrets or similar concerns.

If you have questions about this advisory, please contact Pat Honda by telephone at (202) 720-8924, by fax at (202) 720-8972, or by email to [pat.honda@usda.gov](mailto:pat.honda@usda.gov). This advisory is available on the USDA homepage at <http://www.usda.gov/procurement/policy/advisories.html>.

**EXPIRATION DATE:** Effective until cancelled.

**[END]**



**United States  
Department of  
Agriculture**

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for Administration

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Procurement and  
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TO: Head of the Contracting Activity Designees  
Agency Chief Information Officers

FROM: W.R. Ashworth  
Senior Procurement Executive

JUN 8 2005

Scott Charbo  
Chief Information Officer

JUN - 9 2005

SUBJECT: Use of Brand Name Specifications

The purpose of this memorandum is to promulgate Office of Management and Budget (OMB) memorandum of April 11, 2005, which reinforces the need for contract specifications to be vendor and technology neutral.

In addition to emphasizing the need to limit the use of brand name specifications, unless specific written justification in accordance with the Federal Acquisition Regulation (FAR) is executed, the OMB memorandum expressed concern that there may have been, in recent years, a significant increase in the use of such specifications, particularly for information technology (IT) procurements. Examples related to both IT and non-IT procurements were discussed.

FAR 11.105 states that "requirements shall not be written so as to require a particular brand name, product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless . . . the particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet the agency's needs . . ." and the use of that exception is justified in writing. (See the copy of FAR 11.105 attached.)

To ensure transparency in the procurement process, OMB has asked agencies to publicize the justification for the use of a brand name associated with a single manufacturer with the solicitation at the time the solicitation is posted on the Federal Business Opportunities website (FedBizOpps). If publication of the justification is inappropriate because of national security, trade secrets or similar concerns, OMB has stated that a copy of the justification should be provided to the Office of Federal Procurement Policy.

Heads of the Contracting Activity Designees (HCADs) and Agency Chief Information Officers (CIOs) are requested to re-emphasize the requirements of FAR 11.105 and

remind personnel involved in the acquisition process (including, but not limited to requisitioners, contracting officers, contract specialists, purchasing agents, program/project officers), that brand name specifications should be used sparingly, and when used, must be justified in writing in accordance with the FAR.

By close of business June 30, 2005, HCADs and Agency CIOs are requested to submit written notifications to our respective offices, of the method(s) employed in your agencies to ensure that: (1) the use of brand name specifications is mitigated, and (2) when required, written justifications fully support the need to specify “a particular brand name, product, or features of a product peculiar to one manufacturer.”

We are asking your support in ensuring that Department of Agriculture acquisitions are based on vendor and technology neutral specifications, and are in compliance with the FAR regarding the use of brand name specifications.

Attachments




EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 11, 2005

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS  
CHIEF INFORMATION OFFICERS  
SENIOR PROCUREMENT EXECUTIVES

FROM:

David H. Safavian   
Administrator for Federal Procurement Policy

Karen S. Evans   
Administrator, Office of Electronic Government and  
Information Technology

SUBJECT: Use of Brand Name Specifications

The purpose of this memorandum is to reinforce the need to maintain vendor and technology neutral contract specifications and to comply with the requirements in the Federal Acquisition Regulation (FAR) regarding the use of brand name specifications.

FAR 11.105 states “agency requirements shall not be written so as to require a particular brand name, product, or feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company ...” An exception to this rule is allowed only if there is a written justification and a “particular brand name, product or feature is essential to the Government’s requirements, and market research indicates other companies’ similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency’s needs.”

We are concerned the use of brand name specifications in agency solicitations may have increased significantly in recent years, particularly for information technology procurements. For example, some Federal agencies have issued solicitations with specifications for brand name microprocessors associated with a single manufacturer. Rather than issue brand name specifications for microprocessors, agencies should either: 1) articulate a benchmark for performance; or 2) specify the requirements for applications and interoperability. Benchmarks for microprocessors can be specific for functions such as Internet content creation, office applications, or mail servers. Benchmarks may also measure the overall performance of computers. Consistent with the requirements of OMB Circular A-119, agencies should use voluntary consensus standards to help define the performance requirements.

The increased use of brand name specifications is not limited to information technology procurements. For example, last year a Federal agency issued a request for quotations (RFQ) for approximately \$81 million in office supplies. Throughout the RFQ, office supplies were identified by a vendor number unique to one large office supply company.

In these examples, the use of brand name specifications limited competition and diminished the likelihood the agency purchased the best value product. There is also a significant risk of severely limiting small business participation in these cases. To ensure agencies are providing for maximum competition and are purchasing the best products to meet agency needs, solicitations should limit the use of brand names in accordance with the FAR.

Accordingly, we are requesting that agencies take steps to mitigate brand name usage. As a general rule, contract specifications should emphasize the necessary physical, functional, and performance characteristics of a product, not brand names. In cases where the use of a brand name associated with a single manufacturer is warranted, the FAR currently requires a written justification. Effective immediately, we are asking agencies to publicize the justification with the contract solicitation when the solicitation is posted on the Federal Business Opportunities website ([www.fedbizopps.gov](http://www.fedbizopps.gov)). If publication of the justification is inappropriate because of national security, trade secrets, or similar concerns, agencies should provide a copy of the justification to the Office of Federal Procurement Policy (OFPP).

Please note that this guidance applies to all acquisitions, including simplified acquisitions, GSA purchases, and sole source procurements. Please contact Rob Burton, Associate Administrator, OFPP, if you have any questions regarding this memorandum. He can be reached on 202-395-7579.

descriptions when the salient characteristics are firm requirements.

**11.105 Items peculiar to one manufacturer.**

Agency requirements shall not be written so as to require a particular brand name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(a) The particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs;

(b) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302-1); and

(c) The basis for not providing for maximum practicable competition is documented in the file when the acquisition is awarded using simplified acquisition procedures.

**11.106 Purchase descriptions for service contracts.**

In drafting purchase descriptions for service contracts, agency requiring activities shall ensure that inherently governmental functions (see Subpart 7.5) are not assigned to a contractor. These purchase descriptions shall—

(a) Reserve final determination for Government officials;

(b) Require proper identification of contractor personnel who attend meetings, answer Government telephones, or

work in situations where their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and

(c) Require suitable marking of all documents or reports produced by contractors.

**11.107 Solicitation provision.**

(a) Insert the provision at 52.211-6, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

(b) Insert the provision at 52.211-7, Alternatives to Government-Unique Standards, in solicitations that use Government-unique standards when the agency uses the transaction-based reporting method to report its use of voluntary consensus standards to the National Institute of Standards and Technology (see OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities"). Use of the provision is optional for agencies that report their use of voluntary consensus standards to the National Institute of Standards and Technology using the categorical reporting method. Agencies that manage their specifications on a contract-by-contract basis use the transaction-based method of reporting. Agencies that manage their specifications centrally use the categorical method of reporting. Agency regulations regarding specification management describe which method is used.